COMMON ERRORS AND SOLUTIONS
PERTAINING TO

INHERITANCE

AND

WINDING UP OF ESTATES

A DISCUSSION OF ISLAMIC INHERITANCE INCORPORATING:

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FOREWORD

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The laws of inheritance is that branch of Islamic knowledge which has been referred to as "half of Islamic knowledge" by Rasulullah Sallallahu Alaihi Wasallam. This may be so because money has a great share in a person's life and consequently in his *ibadat* as well. For example, his clothes for covering his body for salaat has to be bought, his sehri and iftari of rozas, etc., etc. all has to do with money, while inheritance has to do only with money. So when inheritance has to do with money and money has to do with all of our life, the importance of inheritance can be understood. It can now be understood why Islam has given it such a prominent position in the

knowledge of Islam.

That is in theory, but in the practical lives of Muslims, generally the world over, it is almost totally neglected. Not only the uninformed and unwary Muslims but good practising Muslims also generally do not pay any attention to this very important, fundamental and decisive aspect of Dien. Some are surprised to even hear that Islam has given directions to this branch of human life!

There are booklets on the subject in various languages including English, but to my knowledge all of them deal with the intricate and difficult rulings of how the inheritance must be distributed, i.e. what each person's share should be. This bores the common man and woman and should be left to the muftis.

What was really needed was to inform the public of the importance and need of getting one's financial matters sorted out according to Islam, drawing one's will and distributing one's estate according to shariat. Alhumdulillah this has been very ably done by Moulana Muhammad Ilyas Patel in this booklet.

May Allah accept his effort and make it a means for Muslims to act accordingly in this very fundamental aspect of our Dien which has an effect on and permeates the rest of our lives.

It also gives me great pleasure that him being my student and a graduate of our Madrasah, we will insha-Allah share in the thawaab of this work.

INTRODUCTION

Rasulullah (Sallallahu Alaihi Wasallam) was on the plains of Arafat when Allah Ta'ala revealed the following *aayah* to him:

"This day I have perfected for you your religion, and I have completed my favour upon you and I have chosen for you Islam as your Deen." ***(5:3)***

Thus we have a perfect religion and a complete way of life. Just as this perfect *Deen* teaches us how to perform our *salaah*, fast in the month of *Ramadhaan* and perform *Haj*, in the same manner the perfect *Deen* of Islam teaches us how to live our social lives, how to conduct our dealings, etc. The importance of these latter aspects, which are termed *huququl-ibaad* (rights of fellow men) in the S*hariah*, can be gauged from the following *Hadith*: Rasulullah (Sallallahu Alaihi Wasallam) once asked the Sahaaba (R.A.): "Do you know who is a bankrupt person?" "A bankrupt person among us is that person who neither has any wealth nor any property," they answered. Rasulullah (Sallallahu Alaihi Wasallam) said: "Verily the pauper in my *Ummah* is that person who will come on the day of *Qiyamah* with much *salaah*, *fasts* and *zakaah* (and many other good deeds such as *Haj*, *Umrah*, *zikr*, *tilaawat*, etc.), but he will come in the condition that he had sworn at someone, slandered another, USURPED SOMEBODY'S PROPERTY and killed someone. Hence these people (who were wronged and oppressed) will be given from his GOOD DEEDS (i.e. the *salaah*, *Haj*, *Umrah*, etc. will be given to them in lieu of what they were harmed in this world). If his good deeds perish before his matter can be settled, their sins will be taken and loaded upon him and he will then be thrown into the fire." *(Mishkaat)*

The aspect of inheritance and other related matters also form part of *huququl-ibaad*. Thus it is imperative that

estates are wound according to the *Shariah* and that every heir be given fully what is due to him/her. Due to lack of knowledge of many basic but fundamentally important aspects in this regard, disputes in matters of estates and inheritance are an almost daily occurrence. This booklet, much of which is based on a talk delivered by my beloved *Ustaad*, **Hazrath Moulana Abdul Hamid Eshaq Saheb** (may Allah Ta'ala grant him a long life, good health and the best of both the worlds), attempts to provide a basic guideline in dealing with matters of inheritance. However it must be understood that the various situations differ drastically from one another. Minor details in a specific matter can make a world of difference with regard to what the actual ruling would be. Therefore, one should not use the examples and incidences given in this book to pass judgement on some personal matter which appears to be similar. Rather, advice should be taken with regard to one's personal situation from the Ulama with experience in this field.

We also humbly request especially the Ulama to bring to our notice any errors or inaccuracies so that they could be rectified in further editions. May Allah Ta'ala out of his infinite mercy accept this humble effort, grant benefit to the *Ummah* by it and make it a means of our salvation in the Hereafter. Aameen.

THE REALITY OF INHERITANCE

"Did not that time dawn upon man when he was not even a thing mentioned" **(76:1)**

"Does man not see that We created him from a drop of semen; Yet suddenly he is an open disputant" (36:77)

It is a very sobering exercise to regularly ponder upon one's creation. At the very least, it would eliminate the intoxication of pride and arrogance. If the reality of the origin of man truly dawns upon him, it would also answer many of his questions or objections.

For instance it would answer many of the questions and objections that arise upon the subject of Islamic inheritance. Therefore, let us delve a little into our past in order to understand the reality of Islamic inheritance.

From absolute non-existence, Allah Ta'ala created this human being step-by-step. From a drop of impure semen, man was fashioned in the dark womb of his mother. In this tiny home he was granted two dainty little hands and feet, two shining little eyes, two ears to hear with, a brain (which he will use to even build space shuttles and reach the moon), as well as every other limb and organ. All this was precisely fitted into this absolute miracle called man. Finally he comes into this world without a single thing, not even clothing to cover his body.

In order to enable him to live in this world and fulfil his needs, out of His grace and mercy, Allah Ta'ala lends him the things of this world to use as required, but within the restrictions imposed by the Lender. This is indeed the reality of what we 'own' in this world. It is a loan from Allah Ta'ala. Our efforts are merely a means of 'fetching' or receiving it from the Lender. However, due to the time period of the loan being a very lengthy one, we often wrongfully begin to regard it as our very own and forget that all that we posses is really borrowed wealth. Nevertheless, just as any item that was borrowed from any person has to be returned to him, upon death, the loan period from Allah Ta'ala expires. Thus this borrowed wealth — every last bit of it — must be returned to its real owner, Allah Ta'ala. The real Owner obviously can do with it what He wishes. Allah Ta'ala, again out of His infinite grace and mercy, declared that it should be granted to the immediate family of the deceased in certain fixed proportions (as a loan until their death). If He wished, He could have commanded that every portion of it

should be given away in charity. No person could ever have any objection to this. However, Allah Ta'ala granted it to the family of the deceased. Why then should anyone have any objections as to why one person was granted a certain amount and another person something more or less? Is not the fixing of the shares the prerogative of the Lender and not the business of anyone else?

This then, is the reality of inheritance. Nevertheless, despite the fact that the inheritance is essentially a gift (loan) from Allah Ta'ala and as such it is His prerogative to give to whomsoever what He wishes, the various proportions are not without their profound wisdom.

Just to take one example, sons receive twice the amount compared to daughters. Apparently, this does not seem fair. However, when one considers the duties and responsibilities that Allah Ta'ala has placed exclusively on the male, it becomes crystal clear that the 2:1 ratio is absolutely just and fair. The male has the responsibility of providing the basic necessities for his wife and children. At times he may have the added responsibility of caring for and providing for his parents. Thus a great financial responsibility rests on his shoulders. Contrary to this, no financial responsibility has been placed on the female. Until she is married, her father is responsible for her. After marriage this responsibility devolves upon the husband. If there is neither husband nor father, the adult brothers or uncles are duty-bound to care for her. Thus she has been given no financial responsibility, yet a significant slice of the inheritance comes to her.

But alas! Man forgets all this and objects against Allah Ta'ala. Allah Ta'ala has spoken the truth: **"Does man not see that we have created him from a drop of semen, yet suddenly he is an open disputant."** (S36: V77)

QUR'AN AND INHERITANCE

The Glorious Qur'an is a book of principles. On many issues the finer details have not been mentioned directly in the Qur'an. These details were explained by Allah Ta'ala through the medium of His beloved Rasul (*sallallahu alaihi wasallam*). However, when one deals with the subject of inheritance, one finds many of the finer details directly in the Qur'an. Allah Ta'ala has described in great detail what the different heirs would receive in the varying situations.

As such it is obvious that there is no room for any change or interference whatsoever in these laws. Wealth has a great amount of temptation and often spurs people to even violate the laws of the Shariah in order to obtain wealth. Lest anyone is driven by the same temptation when it comes to inheritance, Allah Ta'ala concludes the verses pertaining to inheritance with the following clear warning: ***"Those are the boundaries of Allah .... And he who disobeys Allah and his Rasul and transgresses His boundaries, He (Allah) will enter him into the fire, forever he will dwell therein, and for him is a disgraceful punishment." (4:13)***

This also clears a misconception that many people have. Due to lack of knowledge, many people erroneously believe that they have to stipulate in their wills what the different heirs should be given from their estate. From the above it has been clearly understood that the proportionate share of each heir has been predetermined by the Shariah and no person has the right to change that.

HISTORY OF INHERITANCE LAWS

Prior to the revelation of the detailed laws of inheritance, every person was required to make bequests for his immediate family members. Nevertheless according to the custom of the Arabs before Islam, some male relatives would in most cases usurp whatever was left behind by the deceased.

When Aus bin Malik (R.A.) passed away, he left behind a wife, two young daughters and an infant son. Here again the cousins of the deceased took away whatever was left behind. The widow of Aus bin Malik (R.A.) brought her complaint to Rasulullah (Sallallahu Alaihi Wasallam) and informed him that she and her children were totally deprived of their inheritance. Rasulullah (Sallallahu Alaihi Wasallam) asked her to be patient until Allah Ta'ala reveals something in this regard. On that occasion the following verse was revealed: ***"And for the males is a share of what has been left behind by the parents and relatives and for the females is a share of what has been left by the parents and relatives." (4:65)***

Not long after this a similar incident occurred with the widow of Sa'ad bin Rabi' (R.A.). Finally, on this the detail laws of inheritance were revealed. *(Mufidul Waaritheen)*

ADHERENCE TO *SHARIAH*

It is now clear that the laws of inheritance are directly from the Qur'an, with a few finer details found in the Hadith as well. Therefore one must totally submit to the law of Allah Ta'ala and His beloved Rasulullah (Sallallahu Alaihi Wasallam). Allah Ta'ala says: ***"It does not behove of a Believing man or woman that when Allah and His Rasul decree a matter that they should have any choice in that matter. And he who disobeys Allah and His Rasul has deviated a clear deviation." (33:36)***

Nevertheless, it is often noted that the winding up of estates are beset with problems, mostly because one or more of the parties involved are not interested in sorting the matters out Islamically. Instead they make such demands on the basis of the laws of the country which directly contradict the Shariah. At times such a person will even be heard bellowing: ***"It is my right!"*** He will even be prepared to spend thousands in going to court to secure this *right*. A person of this mentality should consider the following: If a non-Muslim makes a bequest that one ton of pork or a million bottles of wine should be given to him, would he still claim that this is now his *right* and consume it? After all, according to the laws of the country, this is totally "legal" for him and his *right*. To demand anything that contradicts the Shariah is no different to this. It is in reality no better than pork or wine for the one who receives it in this *haraam* manner.

AVOIDING PROBLEMS

When it comes to winding up the estate and distributing the inheritance, most unfortunately a great number of cases (perhaps the majority) are marred by disputes and conflicts — sometimes of a very serious nature. Families have been split, brothers and sisters have become estranged and much bitterness and misery is caused to one and all.

Many of these problems are of our own making. If matters are sorted out in advance, the chances of any conflict occuring will be tremendously reduced.

By means of some examples we will be able to ascertain how the problems are created and how some parties then

wrongly conclude that the Shariah is not fair to them (Allah forbid!).

EXAMPLE ONE:

Zaid is the sole owner of a modest business. Everything is running smoothly. As time passes, Zaid's eldest son (Ahmad) who has just completed school is brought into the business. Within a year or two, Ahmad has been fully trained to run the business on his own. Zaid himself becomes less active while Ahmad becomes the *main man*. In the meantime Ahmad's brother (Yusuf) also joins him in his father's shop. The two energetic brothers with their bright ideas transform their father's small modest shop into a thriving multi-million rand concern. Zaid, who is still the sole owner, has faded even further into the background.

While all this is continuing, Zaid's daughter gets married. The wedding expenses (perhaps R25 000. 00) all come from the business. The same happens when the second daughter gets married. Zaid's third son, who has now just finished matric decides to become a doctor, while his fourth son who follows a year later, wants to be an engineer. Naturally, all the expenses of their studies, etc. come from the business of their father which however, is now being run almost entirely by their two brothers. The doctor and engineer finally graduate and set up their own empires in a short time.

As for Ahmad and Yusuf, the two brothers running the business, all they receive is a little allowance (±R500). Besides this, all other expenses are from the business. Ahmad wishes to go for Haj — his father gives him a cheque for R20 000,00. Yusuf gets married — his father furnishes his house for him from the business. All of them have a car but all the cars are bought on the business name (to save tax). Everything is running smoothly ... until Zaid suddenly suffers a fatal heart attack and passes on to his grave, to the Hereafter.

The estate is wound up. Ahmad and Yusuf who ran the business for the past twenty years on their own and transformed it into a multi-million rand concern, are informed that since the business belonged to their father, their doctor and engineer brothers who contributed nothing but received substantial assistance from the business for their studies, etc. will share equally with them. Their two sisters will also get a substantial slice equal to half of their own shares. Ahmad and Yusuf now suddenly feel cheated, they feel betrayed and they want *their* business for themselves only. However, it was never theirs. It was their father's. Thus the disputes and conflicts begin.

THE SOLUTION

This problem could have been avoided in one of the following ways. When the first son (Ahmad) came into the business, the father could have sold him a 25% share (or whatever percentage is appropriate to the specific situation) in the business. When his brother joined, the same could have been done. Thus the business will stand with each PARTNER owning a specific SHARE. The sons would in most instances not have any capital at the time of joining in. That is no problem. They can be given ten years to pay. Thus in this situation upon the demise of Zaid, only the 50% which is his share will be distributed to all the heirs.

Supposing the father does not want to relinquish any part of the business to the sons but wants to remain the sole owner, how then can this problem be averted? Once again it is simple. The sons who are now working in the business must be given a full director's salary, not merely an allowance with all other expenses being borne by

the business. This method of all eating out of the same pot is not akin to an Islamic setup.

Thus whatever the sons work for, at the end of the month they will be paid for. In this way they will also be in a position to make other investments, etc. and set themselves up. Upon the demise of the father, the sons would not feel cheated because what they have worked for, they have already received.

There are other benefits also in adopting one of the above procedures. Supposing after having worked for ten years building up the business, but only receiving a meagre allowance, the son suddenly passes away. He now owns nothing — everything belongs to his father. The deceased son's widow and children are now left only with the few possessions that they have. While it is expected that the daughter-in-law will be given a fair sum to cater for her needs and that of her children as a courtesy from her in-laws, in many instances of this nature, all she is given from the vast business that her deceased husband helped to establish, is a token sum which would barely pay one year's rent. Adopting one of the above- mentioned methods will help to avoid this problem as well.

EXAMPLE TWO

The second example is that of a couple who are both earning a regular income. For instance, Zaid earns a monthly salary of R2000, 00. His wife, a nursery *Madrasah* teacher, comes home with R1500,00 each month. Zaid and his wife pool the money and all the expenses of the home are now paid from this "pot." The groceries are also bought with this joint income and so are the other household items. Part of the pooled money is also saved up. A few years later, the money saved up from the joint income is sufficient to buy a car for R30 000, 00. After some time Zaid obtains an interest-free loan of R100 000, 00 to buy a house. Thus Zaid concludes the deal on the house and signs the papers. The monthly instalments of R1000 however, is now paid from the pooled income of Zaid and his wife — not from Zaid's personal income. Everything is nice and rosy ... until the angel of death suddenly pays a visit to Zaid and parts him from his beloved wife, never to return to her in this world again. He is survived by his wife, parents and a two year-old son.

Zaid's executors now attempt to wind up his estate. They end up having nightmares. They just cannot fathom what really belongs to whom. Zaid's father claims that the house and car belonged to his deceased son while Zaid's wife is demanding a share from it on the basis that she has made substantial contributions towards their payment. As far as the household effects are concerned, there is no clarity in this regard either. It is not certain whether certain items should be included as part of Zaid's estate or not. All this is affecting the share of the little orphan — Zaid's two year-old son. In all the wrangling that goes on thereafter, someone is bound to end up usurping part of the property of the orphan. The severity of this is well known.

At times the above-mentioned rosy and cosy situation of the family is abruptly turned upside down with (May Allah save us all) the marriage ending up in divorce. No sooner do the spouses decide to go their separate ways, a huge brawl and a free-for-all commences with regards to all the property. The husband wants to keep the house and car including the furniture for himself. The wife demands her "share" since she also contributed towards them. Both end up at their attorneys (who at times end up with the biggest "share") ... and what follows is well known.

SOLUTION

First and foremost it is vitally important to know that what belongs to the wife and what she earns is exclusively her property. Nobody has the right to take that away from her. She is at liberty to use it as she pleases within the boundaries of the *Shariah*. Therefore, those items that she acquires with her money strictly belong to her alone. Likewise if she has contributed partly towards the purchase of any item (and the item belongs to "us"), she will be a part owner of that item **equal to the proportion that she has contributed**. Thus if Zaid paid R20 000 for the car and his wife contributed R10 000, Zaid owns two thirds and his wife owns one third. Indeed, if Zaid's wife willfully and of her own choice (not by being coerced directly or indirectly) gave the R10 000 to him as an outright gift, he will be the sole owner of the entire car.

Hence this highlights the fundamental need of defining ownership of all property, including the household effects. This is the first vital step of the solution to avoid the problems already mentioned. It must be clearly defined as to who owns what? If jointly owned, the proportions must be clearly declared.

While most people may know who owns the car, house and other major items, the ownership of the household goods are in most cases a "grey area." Something was perhaps given to one of the spouses as a gift twenty years ago, but now nobody can remember how it came to them or who really is the owner. Over the years both the husband and wife bought many items for the home. Each one of them paid for these items from their respective incomes, thus each one is the sole owner of what he/she bought. However, with the passing of time, neither the husband nor the wife has the faintest idea as to who is the owner with regards to many items.

Winding-up the estate with these "grey areas" becomes very difficult indeed, especially when there are orphans among the heirs. Therefore this aspect must be sorted out immediately. An easy way to overcome this situation is the following: The husband could buy off all the general household items which are part of the "grey area" for a mutually agreed sum (those items where ownership is obvious need not be included, such as the wife's jewellery or sewing machine or the spouse's personal items, etc.). He could pay this immediately if possible or in instalments. Perhaps one of the spouses may just give it all away as an outright gift to the other. That is much simpler. Nevertheless the bottom line is that there should be no "grey area." The ownership of every item must be clearly defined.

EXAMPLE THREE

Very often major disputes among heirs pertain to the values of the properties and businesses of the estate. Here is a typical example. Yusuf has a moderate-sized business. Two of his sons assist him full time in the business. The third son is a teacher, while the fourth has his own business. Two daughters are married. Yusuf passes away. The estate is not wound-up immediately. Yusuf's two sons continue with the business. Finally, after ten years it is decided that the estate should be wound-up and each person given his/her respective share. In the meantime, since Yusuf's demise, the business which was worth a R100 000 is now worth two million rands. The two sons running the business insist that the shares must be calculated only from R100 000 while the rest of the heirs want their shares from the two million rands.

THE REALITY

The reality of the situation is that all the heirs who were not part of the business automatically became sleeping partners upon the death of Yusuf. Their capital was employed for the past ten years. Thus they are entitled to their respective shares from the two million (*see Kifaayatul Mufti;* v.8, p. 114)

Therefore it is necessary that the estate of the deceased be wound-up before any further business could be transacted. The legal procedures with the master of the Supreme Court, which may end up taking several months or even years, will take its course. However, within a few days at the most, the heirs must take stock of the business and sort out the entire estate. The shares of each party must then be determined and allocated. In this way a host of serious problems would be avoided.

These three examples are among the most common problem situations. Besides these, there are many other situations which have the potential of causing problems that could have been easily avoided if the matter had been set on the right course from the beginning. It is therefore important that an *Aalim* with experience in these matters be consulted to ascertain whether one's financial setup, etc. is in order.

ISLAMIC WILL

"It is not correct for a Muslim who has anything to make wasiyyat of (anything to write in his will) that he should even spend two nights without having already written his will." (Mishkaat; p.265)

The Islamic will has nothing to do with stipulating the shares of one's heirs. As it has been already explained, this is something which has been pre-determined in the Shariah. Apart from this, at times it could be *fardh* (compulsory) to have a will while at other times, depending upon the individual situation, it could be *sunnah*. Nevertheless in this Western country, a proper Islamic will is extremely important to avoid problems that could occur when the estate is wound up.

FARDH WILL

It will be *fardh* to draw a will if one has any unfulfilled obligations, whether these pertain to *huququl Ibaad* (the rights of the fellow humans) or *huququl-lah* (the rights of Allah Ta'ala).

Hence if one has any debts to pay, these must be declared in one's will. If one has any *amanah* (trust property) in his possession (such as the wealth of some orphan which he is holding in trust, etc.), this must also be written therein.

Similarly, the outstanding *huququl-lah (fidya,* etc.*)* must also be written down in the will. (Since this will continuously fluctuate as well, it is better to have it written on a signed annexure which should be updated regularly.)

If a person has not performed many of his *salaah* (and perhaps is slowly discharging them now only), or has not fulfilled some vow, etc. or perhaps he has not yet performed the *haj* which has become *fardh* upon him, he should make a *wasiyyah* (bequest) that, upon his death, the *fidya* (compensation) of the missed *salaah* and fasts should be paid and that the undischarged *zakaah* and *haj* should be fulfilled .

SUNNAH WILL

If one has absolutely nothing to declare in one's will pertaining to *huququl ibaad* or to *huququl-lah,* it will still be *sunnah* for one to draw a will. What does such a person write in his will? He could appoint executors to handle the winding-up and the distribution of his estate. He may make any bequests if he so wishes (details of bequests will follow shortly).

According to the Shariah, the above person is not compelled to draw a will. Despite this, every person should have a will to avoid legal problems and complications during the winding-up process. The most important component of the will is the directive that the estate must be wound-up and distributed according to the Shariah.

HARAAM WILL

Certain wills are *haraam* (forbidden). These are such wills wherein the *Shariah* has been violated. This violation could occur in various ways. It could be by means of changing the shares which the *Shariah* has stipulated for the heirs or by disinheriting an heir. These aspects are totally null and void. Despite such directives that a person may have given in his will, the heirs will only be entitled to the shares that have been pre-determined by the *Shariah*. **Likewise the disinherited heir will also be entitled to his full *Shari'* share, irrespective of what may be written in the will**. If the un-Islamic will is executed as is, the sin will be upon the deceased as well as upon those who executed it. The end result of executing this un-Islamic will will be the consumption of *haraam* by those who have received what actually belonged to someone else. May Allah Ta'ala save us! We must understand that the wealth of the deceased automatically devolves upon the heirs in the *Shari'* prescribed portions upon death. This transfer of wealth occurs automatically and has nothing to do with the will. Hence any infringement will be tantamount to usurping what has already become someone elses.

MARRIAGE CONTRACT

Upto the present time, South African Law does not recognise the *Shari' nikah* as a legal marriage until and unless that marriage has been registered by a marriage officer or at a magistrate's court. While the courts refusal to recognise the *nikah* as a legal marriage has absolutely no effect on its validity, to avoid any problems — legal or otherwise, it is greatly emphasised that the marriage be nevertheless registered. At this point it is necessary to discuss briefly the different marriage contracts and their implications.

ANTENUPTIAL CONTRACT

In South African law there are two types of marriage contracts — the antenuptial contract and the marriage in community of property contract. The antenuptial contract regulates the terms and conditions which govern the marriage. It therefore, could be made completely compatible with the laws of the Shariah. The contract should exclude community of property, community of profit and loss, the accrual system and marital power. An antenuptial contract together with a proper Islamic will, should almost totally eliminate the possibility of the estate being distributed unIslamically. The antenuptial contract makes provision for each of the spouses to remain the sole owners of their respective properties at the time of marriage, exactly as the *Shariah* requires it to be.

COMMUNITY OF PROPERTY

A marriage registered without an antenuptial contract automatically becomes a marriage in community of

property. A community of property marriage creates a joint estate wherein the assets and liabilities of the spouses are merged. Both become equal partners in this joint estate, even if one of the spouses in reality owns 90% and the other 10%. Upon the death of either of the spouses, the surviving spouse retains half of the estate. The balance is distributed according to the will (if any). This is certainly contrary to the Shariah. Thus a marriage in community of property can create many problems at the time of the distribution of the inheritance. Those who are conscious of the Shariah will readily opt for a *shari'* distribution so that all the heirs receive their proper share. Others may insist on an unIslamic distribution based on the unIslamic marriage contract, but this will be to their obvious detriment.

THE ESTATE

Before the winding-up of the estate could be discussed, it is necessary to know what forms the estate. The estate of the deceased simply consists of every single thing that he owns. The car of the deceased, as well as the old tyre of the car which he replaced (but it nevertheless still has value), both form part of the estate. Likewise, whether he owns a sweet factory or merely a single sweet that is in his pocket, or the little office pin, or the salt in the grocery cupboard, or even the dusty old coat which he did not wear for the last twenty years — all these nevertheless form part of his estate. The smallest or apparently most insignificant item also will not be just discarded. Rather it will form part of the estate. Thus the right of all the heirs have become attached to it.

Therefore, supposing Amar passes away, his wife cannot just open his cupboards, take all his clothing, including his dusty old coat, and give them away to the first needy person that knocks on the door. If all the heirs are *baaligh* (have reached the age of puberty) and they happily and whole-heartedly consent to this, it is permissible. If any of the heirs is an orphan, his/her permission and consent is not valid and it is of no significance. Should the orphan concede, then too the wife or anyone else cannot interfere with the deceased's personal effects, etc.

"Well then, what should be done with the old coat and other similar items?," one may ask. "It is of no use to any of the heirs or to the orphan." The solution to this is to determine a fair market value of such items. These items could then be sold to any person for that price (caution demands that the price should be a little higher than the estimated market value). If any of the heirs wishes to purchase them and give them to the needy (or anyone else), he is at liberty to do so. The price that was received in lieu of these items will now be added to the estate, and the orphan will be given his full share thereof. The balance may then be given to charity if the *baaligh* heirs wish to do so.

WINDING UP THE ESTATE

The estate of the deceased should be wound-up as a matter of urgency. Delaying this matter could result in serious problems. Therefore, at the most, within a few days of the demise, the executors should ascertain the total value of the estate. If the deceased owned a business, stock of the business should be taken as a matter of urgency.

Three aspects have a prior right over the estate and will be fulfilled before the shares of the heirs are calculated. They are, in order of priority, the following:

1. Funeral expenses 2. Debts 3. Wasiyyah

These aspects will now be dealt with briefly.

FUNERAL EXPENSES

The funeral expenses include the expenses incurred in providing a kafan (shroud), digging of the grave, etc. The rule in this regard is moderation. Neither must one be extravagant nor miserly. Feeding those who have come to attend the funeral is NOT a part of the funeral expense. It is not permissible to use the wealth of the deceased for this purpose. If any of the heirs are orphans, to use the wealth of the deceased for this purpose will be tantamount to usurping the rights of orphans, which the Glorious Qur'an describes in the following words: ***"Verily those who wrongfully eat the wealth of orphans, they are indeed consuming fire in their stomachs, and soon they will enter the burning flames ."*** (*An-Nisa*)

DEBTS

After the funeral expenses have been paid, the debts of the deceased must be fulfilled. Great stress has been laid in the *ahadith* on the fulfillment of debts. It is reported that a martyr is totally forgiven, except for the unpaid debts (Mishkaat: p.330). In another hadith it is reported that when any person would pass away, Rasulullah (Sallallahu Alaihi Wasallam) would enquire from the Sahaaba (R.A.) as to whether he had any unfulfilled debts. If the answer was in the affirmative and he did not leave behind sufficient funds to fulfil the debt, Rasulullah (Sallallahu Alaihi Wasallam) would refuse to perform the janazah salaah unless someone would undertake to pay the debt on his behalf (Tirmizi: v.1; p.127). When the debt becomes due, it should be paid promptly. To delay the payment without a valid reason is a serious sin. Rasulullah (Sallallahu Alaihi Wasallam) is reported to have said: "The delaying in the settlement of a debt by a wealthy person (one who has the funds to pay the debt) is oppression (Mishkaat: p. 251)."

If the debts are in excess of the total estate, the creditors will share what is available on a pro-rata basis. The heirs, who in this instance will obviously receive nothing, are not obliged by the Shariah to fulfil the outstanding amounts. If an heir (or any other person) pays the balance of his own accord, it will be his favour upon the deceased. If the amounts remain unpaid (and are not forgiven either), the deceased will be liable for them on the day of Qiyamah. On that day the outstanding amounts will be fulfilled by the good deeds of the debtor being transferred to the creditor.

WASIYYAH (BEQUESTS)

With regards to *wasiyyah*, the *shari'* viewpoint is quite simple. A person is entitled to make a *wasiyyah* of any amount upto one third the value of the nett estate, after the payment of funeral expenses and debts. The *wasiyyah* of fulfilling any undischarged *huququl-lah* (as already discussed) will also be calculated from this one third. If a bequest is made for the undischarged *huququl-lah* (*fidya*, etc.) to be fulfilled, but the one third of the estate is not sufficient for this, then what should be done? In this case the *huququl-lah* will be analysed. All the *fardh ibaadah* for which *fidya* has to be paid will first be calculated. This amount will be paid out first. Should any portion of the one third still remain, the *fidya* of the *waajib* acts (eg. *Qurbani*) will be calculated and paid out. In this manner all the other aspects will be fulfilled by giving priority to the matters of importance. If the one third is

insufficient to fulfil all the *huququl-lah*, it will be the prerogative of the heirs to fulfil it if they so wish, otherwise the balance will be left unpaid.

Besides this he may make a bequest for any person/s (**non-heirs only**) or institutions eg. Musjid, Madrasah, etc. that he/they be given a certain amount of cash or a certain item from his estate.

If the total wasiyyah for individuals or institutions, etc. exceeds one third, the amounts will be reduced proportionately and brought down to the maximum limit of one third. Should a person at any time mention that certain amounts or items must be given to any person (non-heir) as a gift UPON HIS DEATH, such requests will be regarded as a *wasiyyah*, and will be confined to the maximum of one third of the estate.

NO BEQUEST IS PERMISSIBLE FOR ANY PERSON WHO WILL AUTOMATICALLY INHERIT FROM THE ESTATE. Thus if Zaid makes a *wasiyyah* that one of his sons should be given the business or that his wife should be given his house, or a mother makes a *wasiyyah* that certain jewellery should to be given to a certain daughter and a certain item to her son, this bequest will be impermissible and therefore null and void.

While the deceased has the right to bequeath the full one third, it is *mustahab* (preferable) under all circumstances, that his total bequests for charities or gifts should be less than one third.

If the deceased made no *wasiyyah* at all, the total estate will be distributed among the heirs.

THE EXECUTOR

A person who is appointed by someone to take charge of his affairs after his death is known as the *wasiy*' (executor / trustee). The *wasiy'* will be responsible for the winding-up of the estate of the deceased, which includes the payment of debts, distribution of the inheritance and taking care of matters relating to the family of the deceased.

The *wasiy'* (executor) has an extremely delicate task to fulfil. His position is one of total trust. A person is only appointed as a *wasiy'* by the deceased, due to his reliance upon the former and his trust in him. Since the one who appoints a *wasiy*' realises that he will be in his grave when the executor takes charge, he very carefully selects such a person as a *wasiy*' who he expects will work in the best interests of the heirs and who will ensure that all the matters are executed properly. Thus to abuse this position of trust is the height of deception and dishonesty. Therefore, in such a matter it is imperative to a much greater extent that one should at all times remember his being accountable to Allah Ta'ala.

Indeed, the deceased will not be able to return from the grave to prevent the property of his heirs being usurped and misappropriated. However, Allah Ta'ala is All Knowing and All Seeing. He is aware of what is concealed in the hearts. Thus the *wasiy'* should be extremely meticulous and exercise extra caution in fulfilling his duty. If he discharges his responsibility properly, he will indeed be tremendously rewarded for this.

The *wasiy*' should act in the best interests of the heirs. Therefore, he should provide his services gratis for the pleasure of Allah Ta'ala. However, if the job of management and winding-up of the estate be so time consuming that the *wasiy*' does not get the time to attend to his own work, he is entitled to draw an amount from the estate

for his expenses and needs *(Mufidul Waarithin)*. Extreme caution is necessary in this matter. It is best that when such a situation arises, reliable Ulama with experience in this field should be consulted.

MARADHUL MAUT
(THE LAST ILLNESS)

If a person becomes ill and passes away due to that illness, the illness will be known as his *maradhul maut* (last illness). If one is constantly suffering from an illness over an extended period of time (for one year or more), one's *maradhul maut* will commence from that time when one's health seriously deteriorated. Thus for example, a cancer patient, or a person suffering from a heart ailment for the past two years, suddenly became extremely ill, and passed away a week later. Such a person's *maradhul maut* will be the last week of his life *(Mufidul Waarithin)*. If the illness was for a much shorter period, but during this time the person was able to go about his normal activities, such as attending the Musjid for *salaah*, or a woman being able to attend to her household chores, this illness will not be regarded as the *maradhul maut* from the start. It will only be considered as the *maradhul maut* from that time when the illness becomes acute, as a result leading to his death. *(Mufidul Waarithin).*

A person is not free to dispose of his property as he likes in his *maradhul maut.* Any gift or charities given away by him during this time will be regarded as part of the *wasiyyah*, even though he may have personally handed over the gift to the recipient. Therefore such gifts and charities will only be valid from one third of the estate.

Various other *masa'il* apply during this time with regard to other transactions, such as incurring debts, selling an item for less than its market value, etc. The ruling in these cases could be obtained from the *Ulama* when the need arises.

CALCULATING THE SHARES

Whatever remains of the estate after the payment of the funeral expenses, debts and *wasiyyah*, will be distributed among the heirs according to the pre-determined ratios as detailed in the Qur'an and Hadith.

The calculation of the ratios and shares is the job of an expert in this field. One should not attempt to work out the ratios just with the aid of some book on this subject. Very often there are finer details, which are erroneously not taken into consideration by non-experts, resulting in an incorrect solution.

For the purposes of determining the shares, one must draw-up a detailed list of all the relatives of the deceased eg. husband or wife/wives, parents, grandparents, children, brothers, sisters, etc. If any of the listed relatives does not inherit anything, that will be stated in the answer. The person posing the question should nevertheless list them down as well. If a man passes away while his wife is expecting a child, this must also be clearly stated in the question, since the yet-to-be-born child of the deceased is also entitled to a share in the estate.

A Muslim does not inherit from a *kaafir* and vice versa, irrespective of how close the relationship is (even if it may be father and son). Should this be the situation, it also must be mentioned. Any other relevant details must also be provided.

Upon receiving the solution, the estate must be divided accordingly.

DISTRIBUTION IN LIFETIME

Many people do not wish to leave the distribution of their property to be done upon their death. Instead they prefer to distribute all that they own in their lifetime. This distribution is not inheritance. It is simply a gift. Therefore, one should make an equal distribution among his children with sons and daughters receiving equal shares *(Fataawa Raheemia)*. However, should there exist a valid reason for granting a particular child more than what was given to the other children, this would be permissible *(Imdadul Fataawa: v.3; p.470, Fataawa Mahmoodia, v.5 p.65)*. The bottom line here is the intention. If the intention is to deprive an heir, it would be forbidden. For example, Zaid gives away his business to his son Amar, simply with this intention that, in the event of his sudden death, the other heirs may not have any claim against Amar. Such an intention is wrong. Though the gift itself will be valid, Zaid will be sinful in this instance. Here again, if one wishes to distribute his properties in his lifetime, and wishes to grant a particular child more than the others, it is best to first discuss the matter with an experienced Aalim and obtain a ruling for what one wishes to do.

Gifts

At this point it is necessary to discuss certain aspects pertaining to gifts. For a gift to be valid in the Shariah, it is necessary that the following aspects be fulfilled: There must be a clear defined proposal and acceptance with regards to the gift. This may be verbal, or it could also be by indication. Furthermore, it is necessary for the gift to be *taam* (complete) that the recipient takes possession of the item. The ownership of the item being granted as a gift will remain that of the donor until such time that the recipient takes possession thereof. There are various technical details that apply in this regard. If Ahmad gives his house as a gift to Yusuf, Ahmad must remove his goods from the house, leave the house himself, and hand over the house to Yusuf (by giving him the keys). Only at this point will the house become the property of Yusuf. (If Yusuf now wishes to allow Ahmad to continue living in the house, it is left to him.) If Ahmad merely handed over a set of keys to Yusuf, but did not leave the house, nor did he remove his goods, ownership of the house will remain with Ahmad. In the event of Ahmad's death, the house will be part of his estate and it will be distributed among his heirs. If the recipient is a minor (one who is not yet *baaligh*), the taking of possession by the guardian (father, or if the father is not existing, the guardian who is next in line according to the laws of *Shariah*) will be sufficient to establish the ownership of the child. Hence if a father grants a gift to his minor child, the mere decision of the father that he has granted that item to his child, will establish the ownership of the child therein.

Another important aspect is the granting of a gift of such an item which is owned in partnership. If the item is such that it is indivisible (such as a car, a small little home, etc.) in the sense that if it were divided, no party would be able to derive any proper benefit from his portion, any partner in such an item may give away his share as a gift without any division between the partners taking place. However, if the item is divisible, such as a big plot of vacant land, etc., no partner may grant his portion as a gift without the co-owned item being first distributed. If a share is given as a gift prior to the distribution, such a gift is null and void.

FAMILY TRUSTS

The forming of family trusts is becoming a fairly common practice among the wealthy Muslims of this country.

Basically a family trust is formed by creating a trust with a token donation (eg. R10 000,00) and thereafter transferring properties etc. into the name of the trust. The "donor" specifies various beneficiaries who will become the eventual owners of all that the trust owns when it is dissolved.

In most cases these "trusts" are formed as a tax-saving exercise and to avoid exorbitant estate duties. Neither does the "donor" intend giving away his property, nor does he in reality wish to make the specified beneficiaries the immediate owners. If this is the case, there is no problem with what clauses may be written into the trust deed, provided that it does not necessitate the violation of any aspect of the *Shariah*. In terms of the *Shariah*, this "trust" is non-existent. Hence it will be regarded as part of the estate of the "donor" upon his death. However the trust deed is a valid legal document according to South African law. Here again problems could arise among the heirs if any one party intends to take wrongful advantage of this "trust" which is meaningless in terms of the *shariah*. It is thus imperative that a clear note be addressed to one's executors informing them of the reality of this "trust." Likewise, all the eventual heirs of the "donor" as well as all those who have been specified as beneficiaries in this so called "trust" must be clearly made aware of the true reality of the "trust." It will be best if the true position of the "trust" be documented and all the heirs as well as those named as beneficiaries are made to sign that document stating that they have been made aware of the fact that the "trust" is non-existent in terms of the *Shariah* and that the sole owner is the "donor."

If one truly wishes to make the "trust" valid and binding according to the *Shariah*, it is imperative that the laws of the *Shariah* be fully adhered to. If it is indeed meant to be made *waqf*, the laws of *waqf* must be adhered to. If it is in reality meant to be an immediate gift to the beneficiaries, the laws of *hiba* (gifts) will be applicable. If the conditions of *waqf* or *hiba* are not fulfilled, the gifted property or item will not become the property of the beneficiaries. It will remain the property of the "donor." If the "donor" passes away with the situation remaining unchanged, the "gifted" property will devolve upon the "donor's" heirs according to the laws of inheritance. Therefore, if one intends to form a "family trust" which is valid according to the *shariah*, it is imperative that guidance be taken from Ulama who are experienced in this field before any trust deed is finalised.

Nevertheless whatever the situation may be, the reality of the "trust" must be clearly known and recorded in order to enable the executors to wind-up the estate correctly.

MISCELLANEOUS

WAQF

It has already been mentioned that a person is entitled to make a *wasiyyah* to the maximum of one third. However, it is best in all cases that the total *wasiyyah* should be less than a third. Besides this the very wealthy who have several properties, etc. should take advantage of the opportunity that Allah Ta'ala has given them to earn *thawaab-e-jaariya* (perpetual rewards) by making some property, etc. *waqf* for Deeni purposes. The property could be bequeathed to a Musjid, Madrasah, an organisation doing charitable work, etc. Long after one has passed away, as long as that property, etc. is being used for that *Deeni* purpose, the *thawaab* will accrue to one. One's children may forget one after a few months (as happens in many cases) and only remember to make *isaale thawab* (do some good deed and pass on the rewards) for their deceased father on certain occasions in the year. However, in the case of making something *waqf*, one will continuously receive the tremendous rewards for the good that accrues from that *waqf*. In this *waqf* one could make the intention of *isale thawaab* for Rasulullah (Sallallahu Alaihi Wasallam), for one's parents, etc. The continuous rewards will accrue to them as well as to the

one who made it *waqf* . There is much flexibility in this aspect. One should form the *waqf* and execute it in one's lifetime. A clause could be added that one will personally benefit from the income as long as one is living. Thereafter it will devolve upon the *Deeni* cause specified. There are various others clauses that one could write into the *waqf* deed. Details should be obtained from reliable Ulama.

SECOND WIFE

Some people very secretly contract a second marriage. Besides themselves and the two witnesses, hardly anyone else is aware of the second *nikah*. This is contrary to the instructions of Rasulullah (Sallallahu Alaihi Wasallam). Rasulullah (Sallallahu Alaihi Wasallam) is reported to have said: "Announce the nikah" *(Mishkaat)*. Nevertheless, provided that the conditions of the nikah were fulfilled, it is a valid marriage. Therefore, the second wife as well one's children from her will also inherit from one's estate. Due to the secrecy which is maintained with regards to this second marriage, at times a person even passes away while nobody is yet aware of the second wife. As a result she is deprived of her inheritance. If she musters up the courage to come and claim her share as a wife, nobody believes her. It is therefore incumbent that a person notes down the details of this second marriage in his will.

Similar is the case of an estranged wife. As long as she has not been divorced and her *iddat* has not expired, she will inherit in the estate of her estranged husband. She cannot be deprived of her rightful share.

TRAVELLERS WILL

When travelling overseas, it is extremely important to have a "travellers will." In the case of death while travelling in a foreign country, all the possessions that one has on one's person are frozen by the government of that country until it is established who the rightful heirs are. This can be a very difficult task, considering the problems of distance, communication, etc. As a result at times the wealth of the deceased remains frozen by the foreign government for years. These problems can be avoided by drawing up a simple travellers will and carrying the same on one's person. Copies of a travellers will are available at the Jamiat offices.

FORGIVING DEBTS

The question of debts has been dealt with in detail on page 19. The severity of leaving unpaid debts has been clearly outlined in that chapter. However, it is also important that we consider another aspect of debts — where possible, to forgive (totally or even a portion) the debts of one who does not have the means to repay his debts. What this means is that if a debtor is making every attempt to pay but due to severe circumstances he just cannot fulfil his debt, in such a situation it is encouraged in the Qur'an that respite be given to the debtor, or he be forgiven. Allah Ta'ala says in the Glorious Qur'an: ***"And if he (the debtor) be in difficulty (and is unable to pay the debt), then grant him time until it is easy (to repay). And if you remit it by way of charity, it is better for you if you only knew***." (*Al-Baqarah* : 280)

As long as a person is living, there is hope that he may become wealthy some day and be able to repay his debts. However, when the debtor has passed away and neither did he leave sufficient funds to fulfil the debt, nor do any of his heirs pay the debts on his behalf as a courtesy to the deceased, there apparently remains no hope of ever recovering the debt. In such a case the creditor should open up his heart and forgive the debt of the deceased. As a result of being forgiven by the creditor, the soul of the deceased will be released from the "detention" that was

caused due to the unfulfilled debts. It is reported in a *Hadith* that Rasulullah (Sallallahu Alaihi Wasallam) said: "The soul of a deceased is prevented (from entering *Jannah*) until his debts are cleared" (*Mishkaat*).

Furthermore, in the abovementioned *aayah* Allah Ta'ala has termed the forgiving of the debt as *sadaqah* (charity). This means that one receives the reward of *sadaqah* in forgiving the debt. Allah Ta'ala also declares that this *sadaqah* is "***better for you if you only knew***." Firstly, it is better for one in this very world, since the Qur'an and Hadith clearly state that *sadaqah* does NOT decrease one's wealth. By remitting the debt, one's wealth will not decrease. Rather, the *barakah* of this remission will be very soon noticed in the wealth. Secondly, in the Hereafter when one will witness the rewards received for forgiving the debt, then only will one truly realise that it was indeed better to have forgiven the debt. Thus one should open out one's heart and remit the debt, especially when there is no hope of the debt being repaid.

Several Ahadith also extol the virtues of giving respite to the debtor or forgiving the debts. Rasulullah (Sallallahu Alaihi Wasallam) is reported to have said: "The one who wishes that he should be blessed with the shade of the mercy of Allah on that day when there will be no other shade, he should be lenient with the debtor who is in difficulty or forgive him" (*Tabrani*). In another hadith it is reported that Rasulullah (Sallallahu Alaihi Wasallam) said: "The one who grants respite to a poor debtor, he is granted the reward of giving *sadaqah* to the equivalent amount of the debt for each day that he has given respite. And if the due date arrives and the debtor is unable to pay, he is given a reward of giving in *sadaqah* double the amount of the debt for each day that he extends the credit after the due date (*Sahih Muslim*). Rasulullah (Sallallahu Alaihi Wasallam) is also reported to have said: "The one who wishes that his *duas* should be accepted, or that his difficulties should be removed, he should be lenient and give respite to the hard-pressed debtor." (*Ma'ariful Qur'an*).

It is reported by Abu Hurairah (R.A.) that Rasulullah (Sallallahu Alaihi Wasallam) said: "A certain person used to give loans to people. His instruction to his debt collector was: "When you go to someone poor, be lenient and forgiving (accept what is given and grant respite for the rest or forgive it), perhaps Allah Ta'ala may treat us with the same leniency and forgiveness (in the Hereafter)." Thus when he appeared before Allah (after death), Allah forgave him (*Sahih Muslim*).

GENERAL ADVICE IN WILL

Advice given in one's lifetime is technically termed *nasiha*. If one writes down such advice as part of his will, it is called *wasiyyah*. Thus it is understood that *wasiyyah* is NOT RESTRICTED to making bequests of money and properties. Rather, an important part of the *wasiyyah* is advice to one's family, relatives, friends, etc. This may be called the parting advice of a person. When he has passed away and can no more communicate with anybody, at that time his family and relatives will read his will. Hence when they find some advice therein, they will treasure it greatly. Often a person cites the reason for doing some good action as: ***"It was my father's / mother's wasiyyah!"*** Rasulullah (Sallallahu Alaihi Wasallam) also made several *wasaya (plural of wasiyyah)* prior to his demise. The Qur'an relates the following *wasiyyah* of Ebrahim (A.S.) and Ya'coob (A.S.) to their sons: "*O my beloved sons, verily Allah Ta'ala has chosen the Deen for you, thus do not die except that you are Muslims*." (*Al-Baqarah*) Hence it was the practice of all the pious predecessors to make a *wasiyyah* of this nature. Hereunder as an example some aspects are mentioned in point form which, among others, one may want to include in one's *wasiyyah*.

I hereby make wasiyyah *of the following to my family and relatives:*

1. At the time of my death, no customs and practices which are contrary to the *sunnah* must be engaged in.

2. After performing my *ghusal* etc. in the *sunnah* manner, my burial must not be unduly delayed.

3. Wind up my estate and give all the heirs their shares according to the Shariah as quickly as possible. Ensure that everybody is given the total amount that is due to them.

4. If I have wronged anybody by having spoken ill of them, having hurt their feelings, etc., I humbly beseech you to forgive me. I have forgiven everybody who may have wronged me in any way.

5. Guard your Imaan and that of your children. It is your most valuable asset. Make the environment of the home such that it is conducive to the strengthening of Imaan. Have *Ta'lim* regularly. Be punctual on your own *salaah* and ensure that the children do the same. PLEASE, have mercy on yourselves and upon your children — throw out the T.V. from the home if you have one.

6. I request my family and relatives to at least recite three times *Surah Ikhlaas* and pass on the reward to me daily. Those who can recite more should do so. If possible, give some *sadaqah* and pass on the rewards to me as well. These are the gifts that will benefit me. **Do not gather people for the purpose of *isaale thawaab* for me.** Whoever wishes may individually at their own time recite whatever they can and pass on the *thawaab* to me.

7. My wife, daughters and other relatives are urged to observe the laws of *hijaab* at all times.

8. I greatly wish that my son should become a *Hafiz* and *Aalim*.

9. Be mindful of your duties to Allah Ta'ala as well as to fellow men. Do not usurp the rights of anyone.

10. I urge my family to live within their means. Do not attempt to keep up with the trend. Maintain simplicity in all things. Do not be extravagant, nor make yourself accustomed to luxuries. Cast aside all the fashions and styles of the West. Adopt the *sunnah* at all times.

11. Refrain from debts for unnecessary things. NEVER involve yourself in loans on interest.

12. The marriage of my sons and daughters must be conducted with the least amount of troubles and expense. Do not try to impress people on these occasions, nor be concerned about their criticism. Rather, seek the pleasure of Allah and His Rasul (Sallallahu Alaihi Wasallam) and be concerned of refraining from their displeasure.

12. Maintain unity among one another at all times even if you have to lower yourself for this

purpose. The one who will humble himself for the sake of Allah, Allah Ta'ala will elevate him.

13. Forgive the faults of others. Do not seek revenge against anybody.

14. This world is a passing phase. Your destiny is the *Aakhirah*. Do not devote all your energies for this temporary place. Devote more time for the service of *Deen*. Also seek knowledge of *Deen* until the grave.

* * *

Many other points of this nature could be added. Perhaps one may not have succeeded in implementing many aspects of *Deen* in his family during his lifetime. It is very possible that he may succeed in doing so upon his death — by means of his *wasiyyah.* As a result he could even possibly gain salvation in the Hereafter.

CONCLUSION

In conclusion it is appropriate that the main points be summarised.

1. Inheritance is the prerogative of Allah Ta'ala. Nobody has the right to question it. The laws of Inheritance are derived from the Qur'an and Hadith and the different shares of the heirs have been predetermined. One cannot change them. Adherence to the shariah is necessary in all matters, including the matters of inheritance.

2. In order to avoid problems, one should have one's financial matters in order. There must be clear definition of property with regards to all aspects, especially household goods.

3. It is extremely important that one has a proper Islamic will drawn up. One should also include some general advice in his will.

4. Not registering one's marriage according to South African law has no effect on the validity of the *nikah*. However, problems could arise if any of the heirs attempts to do something unIslamic. As a matter of caution it is better to register the marriage. The only marriage contract compatible with the *shariah* is the antenuptial contract with the exclusion of the accrual system. The community of property marriage contradicts the *shari'* laws.

5. The estate of the deceased should be wound up speedily and the heirs must be given their shares. Bequests for any heirs is not permissible.

6. One must be very careful about debts. If they are not paid in this world, one would have to pay for them with one's good deeds in the Hereafter.

May Allah Ta'ala enable us to have all our matters in order and grant us the *tawfeeq* to be forever prepared for death. Aameen.